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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

Yvonne Becker,

Plaintiff,

v.

Wells Fargo & Co.; Employee Benefit
 Review Committee; Human Resources
 Committee of the Board of Directors of
 Wells Fargo & Co.; Ronald L. Sargent;
 Wayne M. Hewett; Donald M. James;
 Maria R. Morris; Wells Fargo Bank,
 National; and Galliard Capital Management,

Defendants.

Case No. 4:20-CV-01803-JST

**JOINT CASE MANAGEMENT
 STATEMENT**

Pursuant to Civil Local Rule 16-9 and the Standing Order for All Judges of the Northern District of California: Contents of Joint Case Management Statement, Plaintiff Yvonne Becker (“Plaintiff”), and Defendants Wells Fargo & Company; Employee Benefit Review Committee; Ronald L. Sargent; Wayne M. Hewett; Donald M. James; Maria R. Morris; Wells Fargo Bank, National Association (“WFBNA”);¹ and Galliard Capital Management, Inc. (“Galliard”),² (collectively “Defendants”) (together with Plaintiff “the Parties”), jointly submit this Case Management Statement.

1. Jurisdiction & Service

The Parties agree that the Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 29 U.S.C. § 1132(e)(1). No issues exist regarding personal jurisdiction.

Defendants’ Position: While Defendants do not dispute that this Court has jurisdiction over this action, Defendants contend that this Court is not the proper venue to hear this case. As explained in Defendants’ Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) (Dkt. Nos. 41 & 48), this action should be transferred to the U.S. District Court for the District of Minnesota because the Wells Fargo & Company 401(k) Plan (the “Plan”) has a valid and enforceable forum selection clause and, independently, the traditional Section 1404(a) factors clearly establish that the District of Minnesota is a more convenient forum for this action.

Plaintiff’s Position: Plaintiff brought this ERISA action in the district where she lives, worked for Wells Fargo & Co. for 26 years, and where Wells Fargo & Co. is currently headquartered. Accordingly, the Section 1404 factors do not establish that the District of Minnesota is the more convenient forum. And the forum selection clause upon which Defendants rely is invalid for the reasons set forth in her Opposition to Defendants’ Motion to Transfer Venue.

¹ Wells Fargo Bank, National Association is improperly named in the Complaint as Wells Fargo Bank, National.

² Galliard Capital Management, Inc. is improperly named as Galliard Capital Management in the Complaint.

1 2. Facts

2 Plaintiff's Position: Plaintiff brings this ERISA class action on behalf of all participants
 3 and beneficiaries in the Wells Fargo & Co. 401(k) Plan (the "Plan") from March 13, 2014 to the
 4 date of judgment. Plaintiff alleges that Defendants selected and retained Wells Fargo products as
 5 investment options in the Plan over materially identical, yet cheaper, non-proprietary
 6 alternatives; selected Wells Fargo products that had no performance history that could form the
 7 basis of a prudent fiduciary decision-making process; and failed to remove proprietary funds
 8 despite sustained underperformance. These actions served Wells Fargo's corporate interests, as
 9 the selection of proprietary investments for the Plan provided fees to Wells Fargo, supported its
 10 asset management business, and/or provided seed money for Wells Fargo to launch new fund
 11 products.

12 Plaintiff brings four claims for violation of ERISA. Count I is a claim against the Wells
 13 Fargo Committee Defendants for breach of their fiduciary duties to participants to prudently and
 14 loyally select and monitor investments for the Plan. Counts II and III are against the Wells Fargo
 15 Committee Defendants, Wells Fargo Bank, and Galliard Capital Management for engaging in
 16 prohibited transactions in violation of ERISA by choosing investments in which Wells Fargo had
 17 a financial interest. And Count V is against Wells Fargo & Co. for engaging in prohibited
 18 transactions in violation of ERISA.³

19 Plaintiff is aware of the following disputed factual questions:

- 20 • Defendants' process for selecting and monitoring Plan investments during the relevant
 21 time period;
- 22 • Defendants' process for monitoring Plan fiduciaries, such as the Committee Defendants,
 23 during the relevant time period;
- 24 • Whether the Plan and its participants suffered losses and/or Defendants profited as a
 25 result of Defendants' alleged fiduciary breaches and prohibited transactions, and if so, in

26 _____
 27 ³ Count IV is brought against the Board Defendants for failure to monitor and remove Plan
 28 fiduciaries who breached their ERISA duties. It is currently voluntarily dismissed without
 prejudice pursuant to the parties' stipulation dismissing the Human Resources Committee Board
 of Directors. ECF Nos. 39, 40.

1 what amount.

2 Defendants' Position: Wells Fargo sponsors the Wells Fargo & Company 401(k) Plan (the
3 "Plan") for eligible Wells Fargo employees. The Plan is a defined contribution pension plan
4 subject to ERISA, 29 U.S.C. § 1001 et. seq., that allows Wells Fargo employees to save for
5 retirement by means of pre-tax contributions to the Plan, which are matched by Wells Fargo up to
6 a prescribed percentage. Employees have the sole discretion to determine how to invest the
7 contributions made on their behalf by choosing among various investment funds offered by the
8 Plan.

9 Plaintiff Yvonne M. Becker worked for Wells Fargo on four separate occasions between
10 1985 and 2013, with her last employment period ending December 5, 2013.

11 Becker commenced this action in the U.S. District Court for the Northern District of
12 California. (Dkt. No. 1.) The Class Action Complaint asserts four claims for breach of ERISA's
13 fiduciary duties and violation of ERISA's prohibited transaction rules against Wells Fargo,
14 WFBNA, Galliard, and the EBRC. In Count I, Becker claims that the EBRC, and its individual
15 members, breached their fiduciary duties of prudence and loyalty under ERISA by including in
16 the Plan certain investment options that allegedly underperformed and were more expensive than
17 other funds preferred by Becker. (Compl. ¶¶ 180–90.) In Count IV, Becker claims that the HRC
18 breached its fiduciary duties under ERISA by failing to monitor the EBRC and allowing the EBRC
19 to include certain investment options in the Plan that are affiliated with Wells Fargo. (Compl. ¶¶
20 214–25.) In Counts II-III and V, Becker claims that Wells Fargo, WFBNA, the EBRC, and
21 Galliard breached ERISA's prohibited transaction rules by including certain investment options in
22 the Plan that are affiliated with Wells Fargo for the purpose of benefiting Wells Fargo and affiliated
23 entities. (Compl. ¶¶ 191–213, 226–39.)

24 Becker seeks to bring this action on behalf of a class of "[a]ll participants and beneficiaries
25 in the [Plan] from March 13, 2014 through the date of judgment . . ." pursuant to ERISA
26 §§ 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3), to recover losses to the Plan allegedly
27 resulting from Defendants' fiduciary breaches and prohibited transactions and to recover other
28 equitable and injunctive relief. (Compl. ¶¶ 1, 170.)

1 3. Legal Issues

2 Plaintiff's Position: The principal legal issues in dispute are:

- 3 • Whether Defendants' failure to prudently and loyally monitor and select investments for
- 4 the Plan during the Class Period by selecting overly expensive and underperforming
- 5 Wells Fargo-affiliated funds for the Plan relative to alternative investment options
- 6 constituted breaches of fiduciary duty, *see* 29 U.S.C. § 1104, ERISA § 404; and
- 7 • Whether Defendants caused the Plan to engage in prohibited transactions under 29 U.S.C.
- 8 §§ 1106(a)(1)(A), (a)(1)(D), (b)(1), and (b)(3) through the inclusion of Wells Fargo-
- 9 affiliated funds in the Plan lineup,

10 Defendants' Position: The disputed legal issues in this case include:

- 11 • Whether this action should be transferred to the U.S. District Court for the District
- 12 of Minnesota pursuant to the Plan's forum selection clause and 28 U.S.C. § 1404(a)?
- 13 • Whether Defendants breached their duties of loyalty and prudence to Plan
- 14 participants under ERISA by offering certain investment options in the Plan?
- 15 • Whether Defendants violated ERISA's prohibited transaction rules by offering
- 16 certain investment options in the Plan?

17 4. Motions

18 The Parties anticipate filing dispositive motions before trial.

19 Plaintiff's Position: Plaintiff anticipates filing a Motion for Class Certification.

20 Defendants' Position: On May 8, 2020, Defendants filed their Motion to Transfer Venue

21 Pursuant to 28 U.S.C. § 1404(a) (Dkt. No. 41). Plaintiff filed her opposition brief on June 12,

22 2020 (Dkt. No. 47). Defendants filed their reply brief on July 3, 2020 (Dkt. No. 48).

23 Defendants anticipate filing a Motion to Dismiss the Class Action Complaint pursuant to

24 Fed. R. Civ. P. 12(b)(1) and/or 12(b)(6) following resolution of Defendants' Motion to Transfer

25 Venue. (*See* Dkt. No. 29.)

26 5. Amendment of Pleadings

27 Plaintiff's Position: Plaintiff proposes that any request for leave to file an amended

28 complaint should be filed no later than 45 days prior to the close of fact discovery.

Defendants' Position: If Plaintiff is permitted to amend the Class Action Complaint, the deadline to amend should be no later than 30 days following the Court's decision on Defendants' Motion to Dismiss.

6. Evidence Preservation

The Parties confirm that they have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines") and will meet and confer pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps to be taken to preserve evidence relevant to the issues reasonably evident in this action.

7. Disclosures

The Parties have agreed to exchange initial disclosures on or before August 31, 2020.

8. Discovery

Plaintiff's Position: Discovery has not yet commenced. The Parties have not yet entered into a stipulated e-discovery order, but intend to do so. Plaintiff proposes the discovery schedule outlined below at Paragraph 17 (Scheduling). Plaintiff also reports as follows pursuant to Rule 26(f):

- **Rule 26(f)(3)(B):** Plaintiff will seek discovery regarding several subjects, including but not limited to: Defendants' process for selecting and monitoring the Plan investment options; the process for selecting and monitoring the Plan's fiduciaries; the fee structure for the Plan's proprietary investments; and the terms of the transactions between the Plan and Wells Fargo-affiliated funds.
- **Rule 26(f)(3)(C):** The Parties have been advised to preserve any potentially relevant ESI.
- **Rule 26(f)(3)(D):** Plaintiff does not believe any issues exist regarding privilege claims or protection of trial-preparation materials.
- **Rule 26(f)(3)(E):** Plaintiff proposes that each side be limited to 20 depositions, with the ability to seek additional depositions if necessary once all Defendants are known. Plaintiff proposes that each side be limited to 25 written interrogatories, as provided in Rule 33(a)(1), with the ability to seek additional interrogatories if necessary once all Defendants are known.
- **Rule 26(f)(3)(F):** Plaintiff does not propose the issuance of any other order under Rule 26(c), but request the issuance of a scheduling order for the case under Rule 16(b).

Defendants' Position: Defendants contend that any discovery plan proposed by Plaintiff is premature until the Court has ruled on the Motion to Transfer Venue Pursuant to 28 U.S.C. §

1 1404(a), particularly since Plaintiff has stated that she intends to file a petition for a writ of
2 mandamus to the Ninth Circuit if the Court grants Defendants' Motion to Transfer Venue
3 Pursuant to 28 U.S.C. § 1404(a). (*See* Dkt. No. 47 at 20–23.) Any discovery plan is premature
4 until it is determined what court this action will be litigated in and, moreover, until Defendants'
5 anticipated Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and/or 12(b)(6) is decided.

6 Notwithstanding the foregoing and without waiving any of their rights, Defendants have
7 agreed to negotiate an ESI protocol and protective order with Plaintiff and anticipate being able to
8 come to agreement on both documents. Furthermore, Defendants contend that all limitations on
9 the scope and quantity of discovery pursuant to the Federal Rules of Civil Procedure and Local
10 Civil Rules should apply.

11 9. Class Actions

12 Plaintiff's Position: Plaintiff has filed this case as a putative class action and intends to
13 move for class certification on or before July 2, 2021. All attorneys of record have reviewed the
14 Procedural Guidance for Class Action Settlements.

15 Defendants' Position: Defendants propose that the case schedule, including the deadline
16 for Plaintiff's certification motion, should be determined after Defendants' Motion to Transfer
17 Venue Pursuant to 28 U.S.C. § 1404(a) and Motion to Dismiss are decided by the Court. Plaintiff's
18 Class Action Complaint states that she brought this action on behalf of a class pursuant to "Fed.
19 R. Civ. P. 23(a) and (b)(1) and/or (b)(3)." Defendants, however, maintain that this action is
20 inappropriate for class certification.

21 10. Related Cases

22 Plaintiff's Position: Plaintiff is unaware of any related cases.

23 Defendants' Position: Defendants are unaware of any open related proceedings or cases
24 pending before other judges of this Court or before any other court or administrative body.

25 11. Relief

26 Plaintiff's Position: Plaintiff seeks multiple forms of relief on behalf of the Plan, and on
27 behalf of herself and all similarly situated Plan participants and beneficiaries in the class.
28 Specifically, Plaintiff seeks:

- 1 • A declaration that Defendants breached their fiduciary duties in the manner described in
- 2 the Complaint;
- 3 • An order that each breaching fiduciary be jointly and severally liable to pay an amount or
- 4 surcharge to the Plan as necessary to make the Plan whole for losses resulting from the
- 5 breaches, plus pre- and post-judgment interest;
- 6 • An order that Defendants provide an accounting, as necessary to determine the amounts
- 7 Defendants must remit to the Plan to restore losses, and to disgorge any profits breaching
- 8 fiduciaries obtained from the use of plan assets or from other ERISA violations;
- 9 • A constructive trust to hold all ill-gotten gains, fees and/or profits paid to the Defendants
- 10 in violation of ERISA, for the sole benefit of the Plan and its participants and
- 11 beneficiaries;
- 12 • An injunction which removes the breaching fiduciaries and requires all fiduciaries to
- 13 avoid all prohibited transactions and future ERISA violations, including but not limited to
- 14 removing all Wells Fargo affiliated funds from the Plan;
- 15 • The appointment of an independent fiduciary to manage the assets of the Plan;
- 16 • Class certification; appointment of Plaintiff as a class representative, and appointment of
- 17 Plaintiff's counsel as class counsel;
- 18 • An award to Plaintiff and the Class their attorneys' fees and costs under 29 U.S.C.
- 19 § 1132(g)(1) and/or the common fund doctrine; and
- 20 • Such other equitable or remediate relief as the Court deems appropriate.

21 Defendants' Position: Defendants deny that Plaintiff is entitled to the relief requested or

22 any relief whatsoever.

23 12. Settlement and ADR

24 The Parties have not yet engaged in ADR, but have met and conferred and filed ADR

25 certifications in compliance with ADR L.R. 3-5 and intend to stipulate to an ADR process.

26 13. Consent to Magistrate Judge For All Purposes

27 Not all parties have consented to have a magistrate judge conduct all further proceedings.

28

14. Other References

This matter is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Plaintiff's Position: Plaintiff does not request bifurcation of issues, claim, or defenses. The legal issues identified above in Section 3 may be resolved by motion.

Defendants' Position: As discussed, Defendants anticipate filing a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and/or 12(b)(6). If not successful in dismissing the Class Action Complaint in its entirety, Defendants anticipate that their motion will substantially narrow the issues to be tried in this action.

16. Expedited Trial Procedure

This is not the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A.

17. Scheduling

Plaintiff's Position: Plaintiff proposes the following litigation schedule:

Event	Deadline
Exchange of Initial Disclosures	July 31, 2020
Parties exchange expert report(s) pertaining to class certification	April 2, 2021
Parties exchange rebuttal expert report(s) pertaining to class certification	May 7, 2021
Close of expert discovery pertaining to class certification	June 18, 2021
Plaintiff's deadline to file motion for class certification	July 2, 2021
Deadline to amend pleadings	August 23, 2021
ADR deadline	September 24, 2021
Close of fact discovery	September 30, 2021
Parties exchange expert report(s) pertaining to merits	October 29, 2021
Parties exchange rebuttal expert report(s) pertaining to merits	December 3, 2021

Close of expert discovery pertaining to merits	December 30, 2021
Deadline to file dispositive motions	January 31, 2022
Pretrial conference	To be determined
Trial	To be determined

Defendants' Position: Defendants believe that it is premature to set a case management schedule until there is a resolution on (1) Defendants' Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a); and (2) Defendants' anticipated Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and/or 12(b)(6). Nevertheless, if the Court is inclined to enter a scheduling order, Defendants propose the following dates as outlined in this Court's model case management statement:

<u>Scheduling</u>	<u>Defendants' Proposed Deadline</u>
Completion of Initial ADR Session	No later than 90 days following resolution of Defendants' Motion to Dismiss
Fact Discovery Cut-off	September 30, 2021
Designation of Experts	October 29, 2021
Designation of Rebuttal Experts	December 3, 2021
Dispositive Motions Briefing Complete	Rule 12 Motions: To be determined after resolution of Defendants' Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a). (<i>See</i> Dkt. No. 29) Summary Judgment Motions: February 28, 2022
Pretrial Conference	To be determined.
Trial	To be determined.

18. Trial

This case will be tried to the Court. The Parties estimate the length of trial to be five (5) to seven (7) to court days.

19. Disclosure of Non-party Interested Entities or Persons

Defendants' Position: As stated in Defendants' Certification of Interested Entities or Persons pursuant to Civil L.R. 3-15 (Dkt. No. 16), Defendants certify that Wells Fargo Bank, National Association is an indirectly owned bank affiliate of Wells Fargo & Company. Galliard Capital Management, Inc. is a wholly-owned, independently operated investment management subsidiary of Wells Fargo Asset Management Holdings, LLC. Wells Fargo Asset Management Holdings, LLC and Galliard Capital Management, Inc. are wholly-owned indirect subsidiaries of Wells Fargo & Company. Defendants further certify that there are no publicly held corporations that own 10% or more of the common stock of Wells Fargo & Company and that it is aware of no persons, associations of persons, firms, or partnerships or corporations not a party to this case that have (i) a financial interest in the subject matter in controversy or in a party a party to the proceedings; or (ii) any other kind of interest that could be substantially affected by the outcome of this proceeding. Defendants certify that, other than the named parties, there is no such interest to report at this time.

Plaintiff's Position: Prior to the Case Management Conference, Plaintiff will file a Certification of Interested Parties stating that there are no individuals other than the named party to report.

20. Professional Conduct

All attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other

The Parties are unaware of any other matters that may facilitate the just, speedy and inexpensive disposition of this matter.

Agreed to and submitted by:

1 Dated: July 7, 2020

/s/ Russell L. Hirschhorn

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ATTESTATION PURSUANT TO L.R. 5-1(i)(3)

I, Nina Wasow, attest that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Date: July 7, 2020

/s/ Nina Wasow

Nina Wasow